IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 28251 of 2007(L)

PETITIONER:

U.K.RAMACHANDRAN,
JUNIOR SUPERINTENDENT,
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE.

BY ADV. SRI.P.K.SURESH KUMAR
SMT.S.SUJA

RESPONDENTS:

1. **THE STATE OF KERALA,**
   REPRESENTED BY ITS SECRETARY,
   DEPARTMENT OF GENERAL EDUCATION,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF PUBLIC INSTRUCTION,**
   THIRUVANANTHAPURAM.

3. **THE SENIOR ADMINISTRATIVE OFFICER,**
   DIRECTORATE OF PUBLIC INSTRUCTION,
   THIRUVANANTHAPURAM.

* 4. ***P.NIRMALA,***
JUNIOR SUPERINTENDENT,
OFFICE OF THE DEPUTY DIRECTOR OF EDUCATION,
WAYANAD.

* **NAME OF THE 4TH RESPONDENT IS CORRECTED AS *T.SURESHKUMAR* AS PER ORDER DTD. 25/09/2007 IN I.A.NO.12806/07.**

BY SR.GOVERNMENT PLEADER SRI. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.28251/2007 L

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ORDER DTD. 5/08/2005 ISSUED BY THE 3RD RESPONDENT.**

EXT.P2: **COPY OF ORDER DTD. 13/10/2005 ISSUED BY THE 3RD RESPONDENT.**

EXT.P3: **COPY OF ORDER DTD. 15/10/2005 ISSUED BY THE STATE PROJECT DIRECTOR, SSA, KERALA, THIRUVANANTHAPURAM.**

EXT.P4: **COPY OF ORDER DTD. 24/10/2005 IN WP(C) NO.29295/2005 PASSED BY THIS HON'BLE COURT.**

EXT.P5: **COPY OF ORDER DTD. 22/02/2006 IN WP(C) NO.29795/2005 PASSED BY THIS HON'BLE COURT.**

EXT.P6: **COPY OF ORDER NO.C5/68926/06/DPI DTD. 17/09/2007 ISSUED BY THE 3RD RESPONDENT.**

2ND RESPONDENT'S EXHIBIT:

EXT.R2(A): **REPORT DTD. 6/09/07.**

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.28251 of 2007 L

Dated this the 18th day of October, 2007.

JUDGMENT

The petitioner challenges Ext.P6 order passed by the 3rd respondent, a Senior Administrative Officer in the office of the Director of Public Instructions, by which he was transferred from the office of the Deputy Director of Education, Kozhikode to the office of the Deputy Director of Education, Wayanad, purportedly on administrative grounds. Essentially the petitioner challenges the order of transfer on two grounds. Firstly, that Ext.P6 dated 17.9.20075 was passed at a point of time when Exts.P4 and P5 orders were passed in another writ petition, W.P.(C)No.29795/05 which was pending before this court. By Ext.P4 this court granted a stay of operation of implementation of Exts.P6 and P7 therein which are respectively Exts.P2 and P3

herein, enabling the petitioner to continue as Junior Superintendent in the office of the Deputy Director of Education, Kozhikode.

2. Second ground on which the order of transfer is challenged is that the same is contumacious in nature as it offends Article 14 of the Constitution of India.

3. In the counter affidavit filed by the 2nd respondent on behalf of the 3rd respondent as well, it is contended that the petitioner being a Junior Superintendent in the office of the Deputy Director was the head of the Audit party which was deputed for conducting the audit of the accounts of BEM Girls Higher Secondary School, Kozhikode, that one Milred Pramila Edward, the retired Headmistress of BEM Girls Higher Secondary School, directly appeared in the office of the Deputy Director of Education,

Kozhikode and registered a complaint verbally against the petitioner and his team mate in the audit party about their corrupt methods. The case was reported to the Director of Public Instructions, Thiruvananthapuram. Ext.R2 (a) is the copy of the said report. It is stated therein that it is unsafe to retain such an officer in the same office. Consequently, the petitioner was transferred as per Ext.P6.

4. Learned counsel for the petitioner submits that Ext.R2(a) and the counter affidavit makes it clear that the order of transfer, though stated to be on administrative reasons, has been demonstrated as one intended to punish the petitioner. This casts a stigma. In such circumstances, the right of the petitioner is affected. Therefore, he should have been heard before such order is passed. He refers to the

decision of this court in {**1967 KLT 354**} and {**1978 KLT 539**} to support the contention that if the order of transfer is not an order in administrative exigencies, but it is intended to punish the petitioner or otherwise casts a stigma on the petitioner, the court can hear the petitioner, ascertain the situation and interfere with the order of transfer.

5. Mr. Suresh Kumar, learned counsel for the petitioner contends that even if the order of transfer does not reveal to be one based on grounds, other than administrative grounds, if it is demonstrated to be issued for other reasons, the court should interfere with the same.

6. Mr.Nandakumar, Senior Government Pleader, submits that no enquiry was conducted as such against the conduct of the petitioner.

Complaints were made by one of the teachers as against the conduct of the petitioner and another person. There was a preliminary enquiry. In the circumstances, it was thought better to remove the petitioner from the audit party in which he was included as Junior Superintendent of the Deputy Director's office and hence he was shifted to Wayanad. The order of transfer is not intended as a punishment. He refers to {**1994 KLT 326}, 1999(2) KLT 673}** and **{AIR 2004 SC 412}.**

7. Insofar as the first ground urged by Sri.Suresh Kumar is concerned, no doubt, it would have been proper for the 3rd respondent either to get the order of stay passed as per Ext.P4 vacated or modified before effecting a transfer as such. But what was stayed in Ext.P4 was essentially transfer of the petitioner from

Kozhikode to SSA Wayanad on deputation basis. It would be difficult to construe the order as fettering the respondents from moving the petitioner to any other place. By a separate judgment, W.P.(C)No.29795/07 has been dismissed. In such circumstances, notwithstanding the fact there is an impropriety on the part of the 3rd respondent for not moving this court for clarification of Ext.P4 order, I am of the view that the explanation offered in this regard in the counter affidavit filed by him seems to be acceptable. At any rate, the validity of the order of transfer will have to be now tested on grounds other than the order of transfer coming into conflict with Ext.P4 order, for the reason that O.P.No.29795/07 has been disposed of.

8. The second ground urged by Sri.Suresh Kumar is on the contention that though the order

of transfer is merely worded as a transfer simpliciter, from Ext.R2(a) and the counter affidavit, it seems to be clear that it is intended as a 'punishment'. In that case, the petitioner should have been heard before any such order is passed.

9. In my view, the version given by the respondent in the counter affidavit that they have not intended Ext.P6 as a punishment insofar as the petitioner is concerned is acceptable. Ext.R2(a) is sent by the Deputy Director to the Director of Public Instructions. Ext.R2(a) report is only a tentative expression of opinion given by the Deputy Director of Education and obviously cannot be treated as an order by a disciplinary authority insofar as the petitioner is concerned. No doubt, it might have been open to the Government or to the department to

conduct a detailed enquiry into the allegations levelled against the petitioner and to facilitate, which, there was still an option available to the Government or the 3rd respondent as part of a legitimate exercise of power to shift the petitioner to some other place. Such an exercise cannot be treated as either illegal or mala fide. The crucial question is whether the transfer is intended as punishment or whether it is vitiated by mala fides. The question of mala fides does not seem to be raised in the writ petition, though the petitioner has contended that the order of transfer is intended as a colourable exercise.

10. A transfer purported to be on administrative grounds essentially as a reaction to a complaint lodged against the petitioner, which contains certain allegations cannot be

treated as a punishment especially when it is not the product of a detailed enquiry conducted against the petitioner and resulting in any permanent detriment to the petitioner.

11. I am of the view that shifting of the petitioner from Kottayam to Wayanad, in the circumstances, will have to be treated as part of the administrative freedom available to the Government or the DD of Education, for that matter. In the circumstances, where the order of transfer does not reflect anything other than administrative reasons and the order was not preceded by any detailed enquiry, containing any conclusion as to the petitioner's complicity or guilt in misconduct as such, the order of transfer need only be construed as transfer simpliciter which does not have any adverse

consequences. For these reasons, I do not find any ground to interfere with Ext.P6.

The writ petition is bereft of merits and the same is, therefore, dismissed.

Sd/-

(V.GIRI)

JUDGE

sk/

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